

NOTICE AUTHORIZED BY JUDGE SOLOMON OLIVER, JR.
OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

If you are currently employed by West Park HD, Inc. as a Delivery Driver OR were formerly employed by West Park HD at any time since May 17, 2016, as a Delivery Driver, please read this important notice regarding your right to join a lawsuit for overtime.

A collective action lawsuit may affect your legal rights.

TO: All persons employed by West Park HD, Inc. as Delivery Drivers at any time between May 17, 2016 and the present.

RE: Alleged unpaid overtime under the Fair Labor Standards Act (“FLSA”).

1. PURPOSE OF THIS NOTICE

This Notice informs you of a collective action lawsuit that has been filed against West Park HD under the Fair Labor Standards Act (“Federal Wage Law”), alleging that Delivery Drivers were improperly denied overtime. This Notice advises you of how your rights may be affected by this lawsuit and tells you how you can include or exclude yourself from the lawsuit.

2. DESCRIPTION OF THE ACTION

On May 17, 2019, this collective action lawsuit was filed against West Park HD, Inc. in the United States District Court for the Northern District of Ohio, Case No. 1:19-cv-01120. The action was filed on behalf of Plaintiff Scott Oberg and all other similarly-situated individuals.

Plaintiff alleges that West Park HD violated Federal Wage Law by not paying overtime for all hours worked over 40 during certain weeks. In particular, Oberg

contends that he and other Delivery Drivers often worked more than 40 hours a week but were only paid a flat rate (such as a salary) or on a per-package basis and were not paid overtime, to include during weeks in which they were not exempt from overtime because they had operated a vehicle with a gross vehicle weight of less than 10,000lbs.

Plaintiff alleges that he and all other similarly-situated individuals are entitled to recover from West Park HD under the Federal Wage Law: (a) unpaid overtime compensation; (b) liquidated (double) damages; (d) attorneys' fees; and (e) costs.

West Park HD disputes Plaintiff's claims. West Park HD denies that any violation of the FLSA that may have occurred was willful or reckless, or in bad faith.

The Court has not yet decided whether Plaintiff or Defendant is correct. By permitting the issuance of this Notice, the Court is not suggesting that Plaintiffs will win or lose the case.

3. YOUR RIGHT TO PARTICIPATE IN THIS ACTION

Plaintiff seeks to sue not only for himself but also for all other persons with whom he is similarly situated. Plaintiff alleges that those individuals are Delivery Drivers who worked for West Park HD for any length of time between May 17, 2016 and the present, **to include current employees**. If you fit this definition, you have the right to participate in this action.

4. HOW TO PARTICIPATE IN THIS ACTION

THE COLLECTIVE ACTION - WHAT ARE MY CHOICES?

IF YOU WANT TO JOIN THE COLLECTIVE ACTION

By signing and sending in the “Consent to Join” form included with this Notice, you will “opt-in.”

If you want to participate, you MUST complete and return the “Consent to Join” form included with this Notice no later than _____ [a date 90 days from the notice]

You can return the “Consent to Join” form by:

- **Mailing it to Plaintiffs’ counsel in the self-addressed and postage-prepaid envelope included with this Notice**
- **Faxing the “Consent to Join” form to Plaintiffs’ counsel at 216-291-5744**
- **Scanning the "Consent to Join" form to Plaintiffs’ counsel at chris.wido@spitzlawfirm.com**

By doing so, you will “opt-in” and become a member of the Collective Action lawsuit.

If you participate, you may be entitled to share in monetary amounts that might be recovered from a trial or settlement in this lawsuit. You give up the right to sue West Park HD on your own for the same claims in this lawsuit.

**IF YOU DO NOT WANT TO
JOIN**

If you do not want to participate, you do not need to do anything. You will not be part of the collective action unless you “opt-in”

You will not be bound by or participate in any judgments or settlement in this case.

**IF YOU LOSE OR MISPLACE THE ENCLOSED FORM OR IF YOU
HAVE ANY QUESTIONS ABOUT FILLING OUT OR RETURNING THE
CONSENT FORM, YOU MAY CONTACT PLAINTIFF’S ATTORNEY
LISTED IN PARAGRAPH 8 OF THIS NOTICE.**

5. NO RETALIATION PERMITTED

THE LAW PROHIBITS WEST PARK HD OR ANY OF ITS AGENTS OR EMPLOYEES FROM HARASSING YOU OR RETALIATING AGAINST YOU IN ANY WAY FOR TAKING PART IN THIS LAWSUIT. **YOU CANNOT BE FIRED, DEMOTED, HAVE YOUR HOURS CUT, OR BE GIVEN UNFAVORABLE WORK ASSIGNMENTS JUST BECAUSE YOU HAVE JOINED THIS CASE. NOR MAY WEST PARK HD THREATEN YOU OR IMPLY THAT ANY OF THESE ACTIONS WILL OCCUR IF YOU JOIN THIS CASE.** WEST PARK HD HAS COMMITTED TO NOT RETALIATE AGAINST EMPLOYEES WHO JOIN THIS LAWSUIT. IF YOU FEEL YOU ARE BEING RETALIATED AGAINST, YOU MAY REPORT IT TO WEST PARK HD’S MANAGEMENT OR CONTACT THE ATTORNEYS IDENTIFIED IN PARAGRAPH 8 BELOW.

6. EFFECT OF JOINING THIS ACTION

If you join this lawsuit, you will be bound by any judgment that is rendered, whether favorable or unfavorable. You will also be bound by, and share in, any settlement that may be reached on behalf of the class.

By joining this action, you designate Plaintiff Scott Oberg as your agent to make decisions on your behalf concerning the litigation, the method and manner of conducting this litigation, the entering of an agreement with Plaintiffs' counsel concerning fees and costs, the entering into a settlement agreement with West Park HD, and all other matters pertaining to this action.

Plaintiff has entered into a contingency fee agreement with Plaintiff's attorney, which means that if there is no recovery, there will be no attorneys' fees or costs chargeable to you. Any settlement of this lawsuit must be approved by the Court. If there is a recovery, the contingency fee percentage payable to Plaintiffs' counsel may be taken out of the total recovery. Costs expended by Plaintiffs' counsel on your behalf will be deducted from the total recovery. **If an award of reasonable attorneys' fees and costs is paid by Defendants, such award will offset the amount owed to Plaintiffs' counsel under the contingency fee dollar-for-dollar.** If the Plaintiff is unsuccessful, you will not owe any attorneys' fees or cost to Plaintiff's attorney.

7. NO LEGAL EFFECT OF NOT JOINING THIS ACTION

If you choose not to join this action, you will not be bound by any judgment or settlement, whether favorable or unfavorable, nor will you share in the recovery, if any. You will be free to file your own lawsuit. However, the pendency of this action will not stop the running of the statute of limitations as to any claims you

may have until you file your own lawsuit. The statute of limitations for Fair Labor Standards Act claims is generally two years from the date of the violation, although it can be extended to three years under some circumstances.

8. YOUR LEGAL REPRESENTATION IF YOU JOIN

Chris P. Wido, Esq.
THE SPITZ LAW FIRM, LLC
25200 Chagrin Blvd., Suite 200
Beachwood, OH 44122
Phone: 216.291.4744
Fax: 216.291.5744
chris.wido@spitzlawfirm.com

WEST PARK HD IS REPRESENTED BY:

David L. Smith, Esq.
P.O Box 20407
Canton, Ohio, 44701
Phone: 330.312.0708
Fax: 330.754.2107
attorneydavidlsmith@gmail.com

9. FURTHER INFORMATION

Further information about this Notice or the action may be obtained from Plaintiffs' counsel, OR Defendants' counsel, using the contact information listed above. Any call to Plaintiffs' counsel is free and confidential. Any call to Defendants' counsel is free, *but not confidential*.

THIS NOTICE HAS BEEN AUTHORIZED BY THE HONORABLE JUDGE SOLOMON OLIVER JR. OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO. THE COURT HAS TAKEN NO POSITION IN THIS CASE REGARDING THE MERITS OF PLAINTIFFS' CLAIMS OR OF DEFENDANTS' DEFENSES.